**REPORTS ON DISCRIMINATION, SEGREGATION AND THE RIGHT TO ADEQUATE HOUSING**

QUESTIONNAIRE

**Background and Objective of the report**

The thematic reports of the Special Rapporteur on the right to adequate housing,
Mr. Balakrishnan Rajagopal, to the General Assembly in 2021 and to the Human Rights Council in 2021 will focus on the issue of discrimination in relation to the right to adequate housing, including the impact of spatial segregation in urban or rural-urban environments on the enjoyment of human rights.

Spatial segregation can be understood as the imposed or preferred separation of groups of people in a particular territory by lines of race, caste, ethnicity, language, religion or income status. Spatial, including residential segregation can have different forms depending on the territorial, cultural or historical context and is often characterized by forms of economic and social exclusion, inequity and spatial disparity in access to infrastructure, services and livelihood opportunities.

Discrimination is understood as any formal or substantive distinction, exclusion, restriction, preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination as to race, colour, sex, language, religion, national or social origin, political or other opinion, property, birth or other status - including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social status - which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights.[[1]](#footnote-1)

The main objectives of the two interrelated reports will be to identify contemporary and historical forms of discrimination and segregation that affect the right to adequate housing, to highlight good practices in the prevention of discrimination and segregation and to provide guidance to States on how they can ensure their human rights obligations in relation to non-discrimination and the right to adequate housing.

To inform his reports Mr. Rajagopal welcomes contributions from States, local and regional governments, national human rights institutions, civil society organizations, academics, UN agencies and other stakeholders.

The questionnaire is detailed to allow for comprehensive collection of information covering all aspects of the right to adequate housing. However, responding to only those questions on which the responding organization, institution or entity has information, or expertise is much appreciated.

**BASIC INFORMATION**

1. Name of Individual, Organization, Institution, Agency or State: **Open Society Justice Initiative, Open Society Foundations**

Type of Entity\*

[ ]  National Government or federal governmental ministry/agency

[ ]  Inter-governmental organization or UN agency

[ ]  Local or regional government, agency, representative or mayor

[ ]  Association, tenant union or housing cooperative

[ ]  NGO network, umbrella organization

[ ]  Community-based NGO

[ ]  Academia

[x]  Foundation

[ ]  National human rights organization, ombudsperson

[ ]  Real estate, urban planning or construction

[ ]  Real estate investor or investment fund

[ ]  Trade Union

[ ]  Other:

2. Categorization of your Work

Please select one or more responses, as appropriate.

[ ] Public administration

[x] Advocacy

[ ] Funding

[x] Legal Assistance

[ ] Networking

[ ] Policy

[x] Research

[ ] Technical Assistance

[ ] Training

[ ] N/A

[ ] Other:

3. City/Town:

4. State/Province: Click here to enter text.

5. Country (please indicate your region or “international” if focus the work of your organization covers multiple countries): **International. The focus of this submission is Denmark.**

6. Contact e-mail (will remain confidential) in case we have questions: Click here to enter text.

**HOUSING DISCRIMINATION**

7. What specific forms of de facto or legal discrimination or barriers towards equal enjoyment of the right to adequate housing do the following groups face in your country (please provide evidence with examples, studies, reports and relevant statistical information):

* **People of African Descent, or Roma**
* **Racial, caste, ethnic, religious groups/minorities or other groups**
* **Migrants, foreigners, refugees, internally displaced persons**
* **Women, children or older persons**
* **Indigenous peoples**
* **Persons with disabilities**
* **LGBTQ persons**
* **Low income persons, including people living in poverty**
* **Residents of informal settlements; persons experiencing homelessness**
* **Other social groups, please specify**

The UN Special Rapporteur on Adequate Housing is already aware of Denmark’s “Ghetto Package” of [laws](https://www.retsinformation.dk/eli/lta/2018/1322) and, together with two other Special Rapporteurs, has lodged an emergency application in connection with ongoing litigation relating to the approval of a development plan under the Package.

The Special Rapporteurs have [described](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26414&LangID=E) the “Ghetto Package” as “[s]tigmatizing laws” which “risk intensifying and entrenching xenophobia and racial discrimination against residents in Denmark who are or are perceived as ‘non-Western’” and have expressed concern about residents being put at “high risk of forced eviction in violation of their right to an adequate housing.”

This accords with the findings of other monitoring bodies. The [UN Committee on Social, Economic and Cultural Rights](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7I1MtEjVgFZjOTx%2Bv7mTUvkKWW%2FrjBRu8HNz0Bl%2Bzb87gtYIimVL5%2BjFD6f1L76xMZCYMwTzITb2Jpme6cOwejXBwB%2Bnoj%2FiM2aq3gz1%2BR9) has stated that the categorisation of “ghettos” based on “non-Western background” results not only in discrimination based on ethnic origin and nationality but also in further marginalization. The Committee has called for remedial action including:

* removal of the definitional element of a “ ghetto ” with reference to residents from “ non-Western ” countries, a discriminator on the basis of ethnic origin and nationality; and
* repeal of all provisions that have a direct or indirect discriminatory effect on refugees, migrants and residents of the “ ghettos. ”

Similarly, the [Advisory Committee on the Framework Convention for the Protection of National Minorities](https://rm.coe.int/5th-op-denmark-en/1680996202) has urged Denmark to reconsider the concepts of immigrants and descendants of immigrants of “Western” and “non-Western” origin and their use in the “Ghetto Package”. The Committee states that the concepts are based on “the arbitrary aggregation of statistics related to place of birth or citizenship” and may lead to “discrimination on the grounds of citizenship, ethnic affiliation and place of residence”.

The relevant law is the [Common Housing Act](https://www.retsinformation.dk/eli/lta/2018/1322) as amended by Act No. 1322 of 27 November 2018. The amended housing law sets out revised definitions of “vulnerable housing estates,” “ghettos” and “tough ghettos.” Of particular note is that “ghettos” are distinguished from “vulnerable housing estates” (areas which have the same socio-economic factors) on the explicit basis that they have 50% or more residents of “non-Western background.”

More specifically, section 61(a)(1) defines a “vulnerable housing estate” as an area of “common housing” inhabited by over 1000 residents where at least two of the following four criteria are met:

1. The share of residents aged between 18 and 64 years with no connection to the job market or the educational system exceeds 40%, calculated as an average of the last two years.
2. The share of residents convicted of violations of the Criminal Code, the Weapons Act, or the Controlled Substances Act exceeds three times the national average, calculated as an average of the last two years.
3. The share of residents aged between 30 and 59 years with only lower secondary education exceeds 60%.
4. The average gross income for taxpayers aged between 15 and 64 years in the area, excluding students, is less than 55% of the average gross income for the same group in the region.

Section 61(a)(2) provides that an area that would otherwise be a “vulnerable housing estate” is defined as a “ghetto” where the share of residents of “non-Western background” exceeds 50%. “Western”

One of the key requirements introduced by the “Ghetto Package” amendments is the requirement for the passing of development plans in all “tough ghetto” areas, with the aim of reducing “common family housing” to a maximum of 40% of such areas by 2030 (section 168(a)). “Common housing” is a particularly Danish form of housing based on principles of democracy, egalitarianism, and affordable housing for all. It is a type of nonprofit housing which is run by housing associations that are intended to be self-governing and independent. The residents pay rent and the housing associations pay annual contributions to the National Building Foundation. The funds are used for matters such as the construction, renovation, or demolition of buildings, as well as for social projects such as activities for children and crime prevention programs. “Tough ghettos” are areas which have met the State’s criteria of “ghetto” for four or more years (sections 61(a)(4) and (5)).

The requirement for such development plans has led to the threat of evictions across the country.

In March 2021, the Ministry of the Interior and Housing announced a [new legislative proposal](https://im.dk/Media/8/4/Pjece_Blandede%20boligomr%C3%A5der.pdf) that seeks to expand the legislation with the aim of reducing the percentage of residents of “non-Western background” in designated areas to a maximum of 30% within the next ten years. The proposal seeks to add a new category of designated areas known as “prevention areas,” again using “non-Western background” as a criterion. It includes restrictions on housing allocation in order to give priority to applicants meeting a defined income, employment, education and citizenship criteria. It also outlines provisions designed to move people into private housing as well as options for further demolitions, risking further rising rents and evictions.

The Ministry estimates that the new category of “prevention areas” would apply to 58 common housing areas with a total of 110,000 residents. To put this in perspective, Denmark has a population of approximately 5.8 million people. The new legislative proposal would thus have an effect on nearly 2% of the population’s right to adequate housing.

There is also ongoing litigation in relation to eviction notices in Helsingor, on the basis that residents’ blocks were targeted for eviction on the basis of reducing residents of “non-Western background” to avoid the area becoming a “tough ghetto.”

8. Discrimination in housing can affect various dimensions of the right to adequate housing and other human rights. Could you provide more details regarding the specific areas in which housing discrimination is experienced? Below are examples of various forms of discrimination that can be experienced in relation to different dimensions of the right to adequate housing:

*Accessibility*

* Discrimination in relation to access to land, including water and natural resources essential for habitation;
* Discrimination in relation to housing for rental or for acquisition or in accessing public or social housing;
* Access to emergency and/or transitional housing after disaster, conflict related displacement or in case of homelessness, family or domestic violence;
* Accessibility of housing for persons with disabilities or older persons, including access to housing for independent living or to care homes;
* Data collection or requirements to furnish certain certifications resulting in the exclusion of particular persons from accessing housing;

*Habitability*

* Discrimination in relation to housing conditions, overcrowding or housing maintenance;
* Exposure to health risks within the home, including lack of ventilation, heating or insulation, exposure to fire or housing collapse risk, unhealthy building materials, or other unhealthy housing covered by the WHO Guidelines on housing and health;
* Exposure to other risks which render housing uninhabitable, including sexual or gender-based violence, interference with privacy and physical security in the home and neighbourhood;
* Discrimination in relation to housing renovation or permission of housing extension;

*Affordability*

* Discrimination in relation to access to public benefits related to housing;
* Lack of equal access to affordable housing;
* Discrimination in public and private housing financing;
* Discrimination related to housing and service costs, housing related fees, litigation or taxation;

*Security of tenure*

* Discrimination in relation to ownership or inheritance of housing and land and related natural resources including water including on the basis of a distinction between formal and informal tenure arrangements;
* Discrimination in relation to evictions, resettlement and compensation for loss or damage of housing, land or livelihoods;
* Differential treatment in land or title registration, permission of housing construction;

*Availability of services, materials, facilities and infrastructure*

* Discrimination in relation to access to work, schooling, health care or public benefits based on the residential address or related to a lack of an official address;
* Public transportation services and transportation costs;
* Provision of water, sanitation, energy, waste collection and other utility services; their quality or cost, including interruptions/blackouts including policies relating to disconnection from utility services;
* Spatial disparities in access to health care, education, child care, cultural and recreational facilities;

*Location*

* Discrimination in relation to freedom of choice of the place of residency within the country, within a particular region or location;
* Discrimination based on place of residence or address, such as exclusion from invitation to job interviews or access to credit;
* Exposure to environmental health risks, such as external air quality, flooding, toxic ground exposure; noise; risk of landslides etc.;
* Living quality and physical security in the neighbourhood, including geographical disparities in policing and law enforcement;

*Cultural adequacy*

* Discrimination in relation to the recognition of culturally adequate dwellings as housing as well as equal access to public space;
* Prohibition of accessing, maintaining or constructing culturally adequate housing;
* Lack of recognition of mobile forms of residency.

As recognised in the emergency application, the requirement to reduce “common family housing” to a maximum of 40% by 2030 is threatening security of tenure. The requirement only applies to “tough ghettos,” with the percentage of residents of “non-Western background” being the determining factor in whether an area is designated as a “ghetto.” Development plans can include the sale or demolition of common family housing, leading to the threat of evictions for many across the country.

This comes at a time when Denmark’s lack of affordable housing and rising rents exacerbated by private investment have been noted by [UN Committee on Social, Economic and Cultural Rights](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7I1MtEjVgFZjOTx%2Bv7mTUvkKWW%2FrjBRu8HNz0Bl%2Bzb87gtYIimVL5%2BjFD6f1L76xMZCYMwTzITb2Jpme6cOwejXBwB%2Bnoj%2FiM2aq3gz1%2BR9), which has recommended that Denmark increase its stock of affordable housing. The “common family housing” which the Package seeks to reduce is a particularly Danish form of housing based on values of democracy, egalitarianism, and affordable housing for all.

The coronavirus pandemic has further highlighted the need for housing security. As noted by the [former UN Special Rapporteur on Adequate Housing](https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_rent_and_mortgage_payers.pdf), it “has laid bare the pre-existing and vast structural inequalities in housing systems all over the world, characterized globally by rising housing unaffordability and the lack of available public housing stock. Actions taken now can help to address these deficiencies, while also serving to protect the right to housing of residents during the pandemic.” Instead of repealing the “Ghetto Package,” however, the current government has reaffirmed its commitment to it throughout the pandemic and is now seeking to expand it.

The current legislation also has other restrictions including in relation to the allocation of housing, and this is being built upon in the Ministry of Interior and Housing’s new proposal. The legislative proposal further restricts access to affordable housing in “prevention areas” through several proposed measures:

1. mandatory use of flexible housing allocation, giving priority to applicants who fulfil employment and education criteria,
2. strict rules as a result of which municipalities will not be able to allocate housing to applicants who are not citizens of the EU, EEA or Switzerland, who receive a number of benefits, or who have been convicted of crimes,
3. the option of demolishing common family housing and rehousing residents.

“Prevention areas” fulfil at least two of the criteria below and have a share of at least 30% “non-Western” immigrants and descendants:

1. the share of residents outside the labour market is 30%;
2. the share of people convicted of certain forms of crime is twice the national average;
3. a minimum of 60 % of the residents only have primary education; and
4. the average income is less than 65 % of the regional average.

Even prior to the proposal, the [UN Committee on Social, Economic and Cultural Rights](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7I1MtEjVgFZjOTx%2Bv7mTUvkKWW%2FrjBRu8HNz0Bl%2Bzb87gtYIimVL5%2BjFD6f1L76xMZCYMwTzITb2Jpme6cOwejXBwB%2Bnoj%2FiM2aq3gz1%2BR9) was concerned “at the shortage of affordable housing in the State party, which is exacerbated by the growing trend in property acquisition by private investors who, under the 1996 Act on Temporary Regulation of Housing Conditions, are authorized to increase rents up to the “value of the rented dwelling” (art. 11)” as well as the impact of the “Ghetto Package” on freedom of residence.

9. Are there any particular current laws, policies or practices in your country, region or town/community that contribute to or exacerbate discrimination in relation to the right to adequate housing?

 As set out above.

10. Can you explain exemptions in national law that allow (certain) public, private or religious housing providers to give preferential or exclusive access to housing to members of a particular group, for example based on membership, employment contract, public service, age, disability, civil status, sex, gender, religion, income or other criteria?

Click here to enter text.

11. In case there may be differential treatment of particular groups in relation to housing, please explain why such treatment could be justifiable according to international human rights standards - for example positive measures benefiting a particular group to overcome systematic discrimination or disadvantage-or if it would amount to discrimination?

Explanations of why the approval of development plan passed under the Ghetto Package are not legally justifiable are set out in the ongoing [litigation](https://www.justiceinitiative.org/litigation/tenants-of-mjolnerparken-v-danish-ministry-of-transport-and-housing). These include that direct discrimination is not justifiable, the removal of residents with “non-Western background” is not a legitimate aim and that the residents’ legitimate interests, including their housing rights under the Charter of the Fundamental Rights of the European Union, are unduly prejudiced. Aside from legal considerations, the laws run counter the government’s own purported justifications for the legislation.

The stated aim of the “Ghetto Package” and new legislative proposal is to “eradicate” all “parallel societies” by 2030. A centre-right government first introduced the “Ghetto Package” in March 2018, following the publication in February 2018 of a report entitled “Parallelsamfund i Danmark” (Parallel Societies in Denmark). In this report, a parallel society is defined as being “physically or mentally isolated and following its own norms and rules, without noticeable contact with Danish society and without a desire to become part of the Danish society.” The report claims that “parallel societies” stem from the fact that some citizens have religious and other values that are different from those of the majority.

Similarly, the Ministry of the Interior and Housing has justified its new legislative proposal on “prevention areas” with its objective to create “mixed cities” which, according to the Ministry, has been hindered by the resident composition of large housing estates. The Ministry states in its proposal that “ethnic and social separation must be combatted”, as concentrations of “non-Western” immigrants, including Danish born descendants of non-Western background, hamper integration and increase the risk of religious and cultural “parallel societies”, which pose one of the largest structural challenges to the community that forms the basis for the Danish welfare society. The purported justifications for the legislation therefore include the preservation of Danish “values” as well as better social integration and socio-economic conditions and remedying/preventing segregation.

With regard to integration, however, as explained [Advisory Committee on the Framework Convention for the Protection of National Minorities](https://rm.coe.int/5th-op-denmark-en/1680996202), Denmark’s inclusion of ‘descendants’ “sends a message that may have a counter-effect on their feeling of belonging and forming an integral part of Danish society.” This is supported by the [UN Committee on Social, Economic and Cultural Rights](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7I1MtEjVgFZjOTx%2Bv7mTUvkKWW%2FrjBRu8HNz0Bl%2Bzb87gtYIimVL5%2BjFD6f1L76xMZCYMwTzITb2Jpme6cOwejXBwB%2Bnoj%2FiM2aq3gz1%2BR9)’s unambiguous conclusion that the categorisation of “ghettos” results not only in discrimination based on ethnic origin and nationality but also in further marginalization. The Committee’s recommendations also make it clear that any measures to address residential segregation [if it in fact exists] and promote integration must be consultative and not coercive or punitive.

Rather than promoting cohesion and tolerance, in implementing the “Ghetto Package”, the State has already acted to [rend the social fabric of tight-knit communities](https://www.justiceinitiative.org/voices/q-and-a-my-fight-to-save-my-home-under-denmarks-harsh-ghetto-plan), with residents facing imminent eviction from homes they have often occupied for many years.

In the name of advancing integration and addressing segregation, the Danish government has implemented a set of laws to regulate those of “non-Western background” through discriminatory measures that in fact reinforce systemic domination of a socially constructed and racialised group.

The previous answers set out the detrimental impact on socio-economic issues including access to affordable housing.

**SPATIAL AND RESIDENTIAL SEGREGATION**

12. What forms of spatial segregation along racial, caste, ethnicity, religion, nationality, migration status, heritage, economic status/income or other social grounds can be observed in urban and urban-rural contexts in your country?

Click here to enter text.

13. What impacts do these forms of spatial and residential segregation have on affected communities? Please point to indicators such as rates of poverty, un-employment and under-employment; prevalence rates of malnutrition; disparities in access to services and facilities (such as access to schooling, health care or other public benefits); disparities in access to infrastructure (lack of and/or poor quality provision of water, sanitation, transportation, energy, waste collection and other utility services); rates of exposure to environmental health risks (poor air quality, flooding, toxic ground exposure, etc).

Click here to enter text.

14. Have any particular historical or current laws, policies or practices in your country, region or town/community caused or exacerbated segregation?

Click here to enter text.

15. In your view, what factors (current or historical) are the principal *drivers* of spatial and residential segregation in urban and urban-rural contexts in your country?

Click here to enter text.

16. Are there examples in your country of where spatial and residential clustering has been a result of voluntary choices of residence by members of particular groups?

“Non-Western background” is a state-made and artificial categorisation. The Open Society Justice Initiative submits that the share of residents of “non-Western background” in common housing areas across Denmark does not amount to imposed segregation, with residents actively choosing to live in common housing, often because it offers an affordable housing option. One resident from Mjølnerparken describes her experiences [here](https://www.justiceinitiative.org/voices/q-and-a-my-fight-to-save-my-home-under-denmarks-harsh-ghetto-plan).

17. The preservation of cultural identity, the right to self-determination of indigenous peoples and the protection of minority rights are examples of grounds for which groups may choose to live separately. Can you comment on how these forms spatial/territorial separation are evidenced in your country, if these communities they are subject to discrimination and suffer adverse consequences from spatial segregation such as through disparities in access to services, infrastructure, living conditions, etc.?

Click here to enter text.

18. In your view, are certain forms of observed residential separation/voluntary clustering compatible with human rights law and if so why? (for example to protect rights of minorities or to respect the freedom of choice of individuals to decide with whom to live together).

As set out above, the [UN Committee on Social, Economic and Cultural Rights](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW7I1MtEjVgFZjOTx%2Bv7mTUvkKWW%2FrjBRu8HNz0Bl%2Bzb87gtYIimVL5%2BjFD6f1L76xMZCYMwTzITb2Jpme6cOwejXBwB%2Bnoj%2FiM2aq3gz1%2BR9) has expressed concern about the impact of the “Ghetto Package” laws on freedom of residence and set out minimum requirements for measures purporting to address residential segregation.

19. Are there any laws or policies requiring certain individuals (and their families) to live in particular housing provided to them or in a particular geographical area (e.g. asylum seekers, migrants, IDPs, refugees, ethnic, religious, linguistic or other minorities, indigenous peoples, persons with disabilities, public service and military personnel)?

Click here to enter text.

20. In your view, what are the principal *barriers* to diminishing spatial, including residential segregation?

Click here to enter text.

**MEASURES AND GOOD PRACTICES TO CURB DISCRIMINATION AND REDUCE SEGREGATION**

21. What laws, policies or measures exist at national or local level to prevent or prohibit discrimination in relation to the right to adequate housing?

Click here to enter text.

22. Have your State, regional or local Government adopted any positive measures, such as measures of affirmative action, to reduce discrimination, segregation or structural inequality in relation to housing? To what extent have such initiatives been successful to address housing discrimination and segregation?

Click here to enter text.

23. Have any particular laws, policies or measures been implemented to limit or reduce residential segregation? To what extent have such policies raised human rights concerns?

As set out above.

24. What is the role of the media, as well as other non- governmental organizations, of religious and governmental institutions, in fostering a climate that reduces or exacerbates discrimination in relation to housing and segregation?

Click here to enter text.

25. Which institutional mechanisms exist to report, redress and monitor cases of discrimination or segregation in relation to the right to adequate housing and how effective have they been to address discrimination?

Click here to enter text.

26. In your view, what are the principal barriers to seek justice for discrimination/segregation in relation to the right to adequate housing?

Click here to enter text.

27. Can you specify how individuals and groups subject to structural discrimination or experiencing segregation can submit complaints to administrative, non-judicial or judicial bodies to seek relief? Please share any leading cases that have been decided by your courts or other agencies in this respect.

Click here to enter text.

**DATA ON DISCRIMINATION IN HOUSING AND SPATIAL/RESIDENTIAL SEGREGATION**

28. Is any data on housing disparities, housing discrimination and spatial segregation collected and publicly available? If so where can it be accessed? Are there any practical or legal barriers to collect and share such information in your country?

Denmark collects data about “non-Western background” and uses this in the above-outlined laws and proposals. The Danish government has stated that, through such laws, it wishes to change resident compositions including in relation to ethnic origin. However, the country’s official position is that it does not collect data relating to race or ethnic origin.

29. Can you kindly share any studies or surveys by local, regional or national Governments or by other institutions to understand better housing disparities, housing discrimination and spatial segregation and how it can be addressed (e.g. title and link, or kindly submit document).

Click here to enter text.

30. Can you provide information and statistics related to complaints related to housing discrimination, how they have been investigated and settled, and information on cases in which private or public actors have been compelled successfully to end such discrimination or been fined or sanctioned for non-compliance?

Click here to enter text.

1. See article 2.1 of International Covenant on Economic, Social and Cultural Rights and the related General Comment No. 20 of the Committee on Economic, Social and Cultural Rights. [↑](#footnote-ref-1)